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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VILLAGE OF SCHAUMBURG • PROGRESS THROUGH THOUGHTFUL PLANNING

Before the
Federal Communications Commission
Washington, DC

In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection)
and Competition Act of 1992;)
Rate Regulation.)

MM Docket 92-266
FCC 92-544

To: the Commission

Comments of the Village of Schaumburg, Illinois

The Village of Schaumburg, Illinois wishes to take this opportunity to express its concerns and opinions to the Federal Communications Commission regarding proposed rules for establishing rate regulation as authorized by the Cable Television Consumer Protection and Competition Act of 1992 (P.L. 102-385). The Village of Schaumburg is a community of 68,600 residents (1990 census) which is presently served by one cable provider, TCI of Illinois. As of November 1992, TCI of Illinois reported their subscriber level at 14,634 residences. This constitutes a penetration level of approximately percent. TCI of Illinois has served Schaumburg since 1988. From 1981 to 1988, Schaumburg was served by Cablenet Associates, a cable operator which TCI purchased.

1. General Issues

Monopolization of cable television services in Schaumburg has appeared to yield undesirable results which are abusive to those who rely on cable as a primary source of information and entertainment. Rapidly escalating rates, proliferation of fees and charges for specific services which were once provided at no charge are the legacy of monopoly control of the cable system and years of deregulation under the 1984 cable act. The Village of Schaumburg believes that greater competition may provide responsiveness to cable subscribers, greater choices and options in the services that subscribers receive and more equitable rates.

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Therefore, in regard to the Commission's basic question on whether the intent of the Cable Act of 1992 is to "produce rates generally lower than those in effect when the Cable Act of 1992 was enacted, or, rather . . . that regulatory standards serve primarily as a check on prospective rate increases," it is the opinion of the Village of Schaumburg that both intents apply. The FCC should determine the rates for basic cable service by exploring areas which are subject to effective competition. Taking into consideration the varying costs of providing cable service in different areas, cable operators in areas not subject to effective competition should adopt rates which would probably be in effect if they were subject to competition. At the same time, areas not subject to effective competition should be restricted to increases in rates as if they were faced with competitive cable systems and rates.

2. Standards and Procedures for Identification of Cable Systems Subject to Effective Competition

The FCC's recognition of competition coming in the form of independent, multi-channel video delivery systems, such as DBS, MMDS, wireless cable systems and telephone entry into cable, is very important. The deregulatory environment created by the Cable Act of 1984 was a great benefit to companies developing new technologies, such as DBS and "video dialtone" through telephone companies. However, this development has been equally detrimental to communities which may be interested in enabling such technologies to compete with wired cable systems.

In our view, there needs to be a measure of guidance from the FCC which would provide municipalities with direction on enabling new technologies to compete with cable on an equal basis. Currently, state laws addressing the issue of level playing fields have made a mockery of the concept by mandating that "no . . . franchise shall be granted under terms or conditions more favorable or less burdensome to the applicant than those required under the existing cable television franchise."¹ The smallest operators are forced to provide the same services and facilities as the existing operator, no matter how large that operator is. It seems unfair that a small wireless cable operation seeking to serve a multi-family housing area with 150 units should be subject to the same material terms and conditions as an operator serving 15,000 subscribers. This view is anti-competitive, yet it is reality in Illinois and a number of other states. The Village of Schaumburg hopes that the FCC will establish some basic guidelines which will enable competition between all cable providers at an initial level, and allow municipalities to further define the playing field for multiple cable delivery systems in which to compete.

3. Regulation of the Basic Service Tier Rates

a. Components of the basic service tier subject to regulation

¹ Illinois Revised Statutes 1992; Chapter 24, Section 11-42-11(e)(3)

Regarding the section of the statute which defines basic services as a tier "to which subscription is required for access to any other tier of service," the Village of Schaumburg agrees with the Commission's conclusion that this section, Section 623, precludes an operator from requiring the purchase of services in addition to the basic tier as a precondition for ordering programming offered on a per channel or per program basis. Although the requirement that subscribers have a basic cable tier precludes the offering of video services completely on a stand-alone basis, it is our view that in light of the goal to minimize paper and administrative work for all parties involved, this requirement is valid. If households were able to access video services on a stand-alone basis, the billing involved could become overly cumbersome, which in turn could affect customer service and timely billing for regular cable subscribers.

In regard to limiting a cable operator to providing only one basic service tier, it is the view of the Village of Schaumburg that the FCC further clarify that cable operators will not be allowed to exploit this provision by offering a basic service tier consisting only of the three requirements outlined in Section 623(b)(7)(A)(i), (ii) and (iii), while offering expanded basic service levels, charging an additional rate for each different expanded tier. For example, in 1988, the basic tier of cable in Schaumburg cost a subscriber \$15.95 per month, without a charge for a remote control unit or a converter box. In 1991, the basic tier of service cost \$15.65 per month; however, this rate did not include a \$0.40/month charge for Sportschannel, which previously was a part of the basic tier, nor did it include a \$2.00/month converter box charge or a \$4.75/month charge for remote control. For a subscriber wishing to obtain the same level of basic cable services in 1991 as was available in 1988, the cost for those services rose to \$22.80 per month, a 42.9 percent increase. This sort of retiering and rate changes cannot be allowed under this section. The bottom-line question should always remain: Is the customer receiving similar service at a similar rate, taking into account inflation and the cost of providing the service?

b. Regulation of the basic service tier by local franchising authorities and the Commission.

aa. Jurisdictional division.

The Village of Schaumburg strongly endorses local regulation of cable systems. The proximity of the municipality to the individual subscriber and to the cable provider enables rapid resolution of minor problems and more thorough resolution of significant issues concerning cable services. It is our perception that reassignment of enforcement of customer service standards, technical performance standards and programming requirements (e.g. PEG channels, Public Access requirements) to the federal level would be counter-productive for the individual subscriber and detrimental to the community at large. With local franchise agreements in effect for years to come, cities and towns need the flexibility to enforce and adapt agreements to meet the needs of subscribers and of their communities.

If the Commission enforces regulatory jurisdiction in an area, the procedures should be the same as those the Commission proposes for local franchising authorities. There are, inevitably, some franchising authorities that will not have the personnel or the authority to regulate rates. The FCC should require, rather than request, that these franchising authorities submit a statement explaining why they cannot petition for certification. It is the view of the Village of Schaumburg that the FCC regulate rates in instances where the franchising authority's certification is denied or revoked and when the franchising authority cannot, for reasons explained in a statement, become certified. If the Commission does not regulate rates in these areas, the cable operators will have an unchecked freedom to increase rates.

bb. Finding of effective competition.

The Village of Schaumburg agrees with the Commission's finding that it is reasonable to require that local franchising authorities provide evidence of the lack of effective competition in the submittal of an application. However, the requirements for certification, a simplified certification form and direction for determining effective competition must be more specifically outlined. Challenges to the assertion of a lack of effective competition should be heard by the Commission as part of a revocation process. Also, a franchise area which is not currently subject to effective competition may become subject to competition in the future. Franchising authorities should be required to renew their certification periodically, perhaps biannually, to ensure the continued absence of effective competition. In addition, franchising authorities should be required to notify the FCC of any change in the status of effective competition in their area, such as when an additional cable operator begins to serve the area.

Regarding the determination of effective competition by franchise area, the Village of Schaumburg agrees that if a cable system serves more than one franchise area in a geographic region, separate effective competition determinations would have to be made for each distinct franchise area. In the Chicago suburban area, TCI of Illinois serves several communities, each of which has its own franchise agreement. However, some of these franchise areas have more than one cable operator and others are only served by TCI. Because of this variance, effective competition should be determined on a franchise-area basis.

Regulation of cable programming services, on the other hand, could be monitored on a system-wide basis, since rates for these services often do not vary greatly between franchise areas or between cable operators in the same geographic region.

cc. Filing of franchise authority certification.

The Village of Schaumburg agrees that the most effective and efficient method of certifying franchise areas to regulate rates is with a standardized and simple form. However, the

certification requirements need to be much more clear than what is outlined in Section 623(a)(3). For example, will the personnel needed to administer regulations depend on the size of the franchise area or the number of subscribers to the cable system? Will franchising authorities be required to hold public hearings in regard to rate increase and retiering? The requirements outlined in Section 623(a)(3) are rather broad.

The Village of Schaumburg believes that two or more communities serviced by the same cable system should have the option to file a joint certification and exercise joint regulatory jurisdiction. There are many small communities that may not have the personnel to administer rate regulations, for instance, but which would like to and need to enforce some type of check on cable rate increases. It will greatly reduce the regulatory exercises of the Commission if communities are allowed to be jointly certified.

While the Village of Schaumburg does not think that coordination of rate regulating activities between communities should be a required part of the certification process, such coordination should be encouraged. As discussed earlier, situations regarding effective competition, actual costs of providing services, franchise agreement requirements and so on may vary from one franchise area to another. Franchising authorities should be able to take into consideration their own circumstances when regulating rates. Using the benchmark approach to regulating rates will achieve the Act's requirement that an operator's rate structure be uniform throughout a geographic area (see page 7). Cable systems operating in more than one franchise area should have the opportunity to bring discrepancies in regulation of basic service to the attention of the franchise authorities involved. If the benchmarking approach is adopted, it appears that it will be rare for franchising authorities to vary greatly in rate regulations.

dd. Approval of certification by the Commission.

The Village of Schaumburg agrees with the Commission's conclusion that "the Act thus contemplates that unless the Commission takes explicit action within 30 days, a certification will be effective." However, it is the Village's view that if the Commission finds fault with the application for certification, the Commission must notify the franchising authority within 30 days from when the certificate was filed. It does not appear that Congress intended that "a reasonable opportunity for the authority to comment" and subsequent final decision by the Commission be completed in the 30 day time period. Rather, if the Commission notifies the franchising authority that, on the face of it, the certification petition is defective, the normal pleading cycle should take effect, allowing the franchising authority to submit additional information and cable operators and other interested parties to offer challenges.

The Village agrees that cable operators and other interested parties could challenge a certification by filing a petition for revocation once the certification is effective. If a cable operator or other interested party believes that the franchising authority miscalculated the

absence of effective competition, this too would be part of a petition for revocation, rather than reconsideration of the Commission's decision to certify the franchising authority.

ee. Revocation of certification.

In regard to the Commission's ability to regulate rates in states which prohibit the regulation of rates by local franchising authorities, it is the view of the Village of Schaumburg that the Commission, being a branch of the federal government, does have power to regulate rates and to authorize local franchising authorities to regulate rates, and therefore supersedes state laws in this area. In most cases, the federal law or the more strict law applies. For instance, regarding the Americans with Disabilities Act, Illinois statute includes several accessibility requirements which are more stringent than what is required by the federal law. The Village of Schaumburg is required to comply with the Illinois law in these instances. On the other hand, there are sections of the Illinois accessibility law which are preempted by the federal ADA law because it is more strict. It seems reasonable that the same logic should apply to the Cable Act of 1992. If state law prohibits the regulation of rates and cable operators in that state charge unreasonable rates, the FCC regulations should preempt the state law and regulate rates.

In addition, Section 2(a)(20) of the Act states that "franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers." Further, the Statement of Policy of the Cable Act of 1992 [Section 2(b)(4)] says that "it is the policy of the Congress in this Act . . . where cable television systems are not subject to effective competition, ensure that consumer interests are protected in receipt of cable service." In light of these two sections, it appears that if the Commission does not have the authority to certify local franchising authorities to regulate rates in states that prohibit local regulation, the residents of those states will not have the benefits of this Act and will continue to be subject to unfair rates for basic services and rate increases.

Possibly, the Commission could regulate rates in states which prohibit rate regulation in instances where rates exceed what the Commission has determined to be reasonable. In such instances, the Commission could act on a petition from a local franchising authority or other interested party.

Regarding "lesser remedies," if a local franchising authority applies regulations inconsistently or otherwise departs from the terms of its certification, suspension of the certification is a possible remedy, at which time the Commission would be responsible for regulation. If the deviation from the certification results in a loss of revenue to the cable operator, a possible "remedy" could be forfeiture of a portion of the franchise fee. Reporting requirements, as suggested by the Commission, would be another possibility, but how long would franchising authorities be required to submit reports? With any of these options, time limits would be needed.

The Village agrees with the proposals by the Commission that a petitioner for revocation or other relief against a franchising authority serve a copy of its petition on the franchising authority. The authority should have 15 days in which to file an opposition to such a petition, and a cable operator or other party ten days in which to reply.

ff. Assumption of jurisdiction by the Commission

Although the Act requires that the Commission assume regulatory authority in instances where the Commission revokes or disapproves a franchise certificate, does the franchising authority have a time line to follow in which to resubmit a certification petition? What is the role of the Commission in these cases? How long will the Commission exercise regulatory authority if a franchising authority does not meet the requirements of certification and does not intend to work toward certification? Perhaps a prerequisite of becoming a franchising authority could be meeting the requirements of certification.

c. Regulations governing rates of the basic service tier.

Although the Cable Act of 1992 specifically requires that franchise authorities, and in some cases, the Commission, regulate rates for the basic service tier, it also requires that the Commission ensure the reasonableness of rates charges for cable programming service. It is the opinion of the Village of Schaumburg that the Act intends that FCC regulations produce low rates for the basic service tier, while at the same time, apply the seven factors to be considered for basic tier rates to determining the "reasonableness" of rates for cable programming service.

Benchmarking

The Village of Schaumburg endorses the benchmarking approach to rate regulation. Because different areas of the country are affected by various costs of operation, franchising requirements, and so on, it seems to be most effective to adopt a simple formula which local franchising authorities could apply to determine rates for basic service. If the cable operator or other interested party thought the rate determination was unfair or incorrect, that party could appeal to the Commission. At that time, the Commission would have the final ruling on the benchmark rate. The simple formula should consist, minimally, of the items outlined in Section 623(b)(2)(C) of the Act. In determining the distinct classes, not only should the number of channels offered be considered, but also the types of channels offered. For instance, if an operator carries six public, education and government (PEG) channels and another operator offers four PEG channels and "American Movie Classics" and "Discover," the two cable systems should probably be in two separate classes because one offers channels which are probably more desirable to the subscriber.

The Village of Schaumburg questions the advisability of permitting benchmark adjustments based upon individual system characteristics. It seems that the types of adjustments allowed

would have to be specified. In addition, the Commission would have to determine if the adjustment were justified. Frequent deviations from the established formula or benchmark may become subjective and open the door for future adjustments.

Establishing indexes for benchmarking could be achieved by relying on information from the random sample of 850 cable systems ordered on December 23, 1992, as well as information gathered from franchising authorities seeking certification. Regional and field offices of the Commission could also provide material for their area on the criteria outlined in Section 623(b)(2)(C).

Adopting a simple formula for determining the benchmark rate would allow a certified franchising authority to adjust rates as costs of providing services change. The authority would simply plug the new numbers into the formula.

Of the benchmark alternatives offered, the Village of Schaumburg prefers the first option -- rates charged by systems facing effective competition. It seems that the purpose of the Cable Act of 1992 is to take the place of competition. In areas where there is no effective competition, this Act provides the FCC or certified franchising authority to apply rate regulations to simulate effective competition. For this reason, defining the benchmark rate by using the average of rates currently charged by systems facing effective competition seems to be the most effective alternative, the most equitable to both the consumer and the cable industry and the alternative which is most in line with the intent of the Act. The rates found in areas facing effective competition would be the basis for determining the reasonableness of benchmarking factors.

Rather than using a price cap benchmark to define reasonable increases in rates for the basic tier, it is the opinion of the Village of Schaumburg that by using new numbers in the simple formula provided by the Commission, such as higher costs of providing channels, costs of new technology, etc., the certified franchising authority will be able to determine reasonable increases in rates.

d. Regulation of rates for equipment.

The Village of Schaumburg strongly endorses the regulation of rates for equipment. As mentioned earlier, in 1988, the costs for a remote control unit and converter box were included in the basic service rate of \$15.95 per month. In 1991, the basic tier of service cost \$15.65 per month, but this rate did not include an extra charge for a channel which had previously been included in the basic tier, nor did it include a \$2.00 per month converter box charge or a \$4.75 per month charge for remote control. Today, a remote control unit still costs \$4.75 per month, a standard converter box is \$1.90 and the charge for an addressable converter box is \$4.82 per month.

It is the opinion of the Village of Schaumburg that equipment used for cable programming services be subject to the same regulations applied to equipment used for basic cable programming. First, there are too many grey areas, such as situations in which equipment is used for both basic and cable programming service. In addition, if charges for equipment used only for cable programming service were not regulated in the same manner, the cable operator has the opportunity to raise rates for this equipment to make up for perceived lost revenue from equipment used for basic service.

The Village of Schaumburg agrees with the conclusion to unbundle rates for installation with rates for the lease of equipment. In our franchising area, TCI has tripled the rate of installation fees from \$20 to \$60 since January, 1989. Different factors surround installation fees and the Village agrees that this proposed unbundling could help to establish an environment in which a competitive market for equipment and installation may develop.

e. Costs of franchise requirements.

The Village agrees with the conclusions made by the Commission in this section.

f. Customer changes.

The Village of Schaumburg endorses the first alternative for determining rates charged for changes in service: basing the charges on the actual costs of making service tier changes at the subscriber's request including any direct costs and a reasonable allocation of indirect costs and overhead and a reasonable profit.

g. Implementation and enforcement.

Under the franchise agreement between the Village of Schaumburg and TCI of Illinois, Inc., TCI is required to notify the Village of any rate changes 30 days before the effective date of the change. However, at this time the Village has no regulatory authority to stop or amend the rate change. In order to act on a proposed rate change in such a way that would render an informed and judicious rate determination, it may be necessary to increase this time frame to 45 or 60 days. The Village of Schaumburg thinks that it is reasonable that if the franchising authority makes no objection to the rate change within the specified period of time, it goes into effect. However, the franchising authority would have the opportunity to comment, amend or reject the rate increase based on the terms of the adopted approach to rate regulation. If the franchising authority chooses to amend or reject rate changes, there should be the opportunity to extend the time period due to the possible need for public hearings. Both parties would need to agree on the time extension. The Village agrees with the Commission's proposal that cable operators notify subscribers in writing of a proposed rate increase at approximately the same time it notifies the franchising authority.

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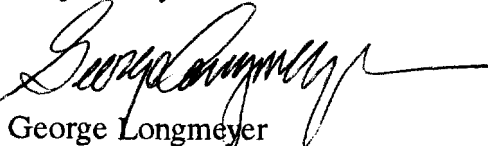
In instances of disputes, it is the opinion of the Village of Schaumburg that the Commission resolve differences. As the Commission points out, this approach might assure a more uniform interpretation of the standards and procedures adopted pursuant to the Cable Act. Because the Act gives the Commission the authority to determine the merits of a petition for certification, and the reconsideration and revocation of certification, it seems to be within the intent of the law that the Commission resolve disputes between the cable operator and the franchising authority.

4. Regulation of Cable Programming Services

It is the opinion of the Village of Schaumburg that the Commission adopt the same criteria for regulating cable programming services as it adopts for regulating basic cable service. This will hinder cable operators from moving unfair charges to the consumer from the basic service level to the cable programming services. Since these rates tend to be more uniform, it would be acceptable for the Commission to regulate these rates on a system-wide basis rather than a franchise-area basis.

The Village of Schaumburg is pleased with the efforts made by the Federal Communications Commission in developing these proposed rules to implement the Cable Television Consumer Protection and Competition Act of 1992. It is our hope that this legislation will put an end to the unjust rate increases that have been so prevalent since the 1984 cable act.

Respectfully submitted:



George Longmeyer
Village Manager